

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BOARD OF COMMISSIONERS - CORPORATION TAX BUREAU

In the Matter of the Petitions of

PATHE INDUSTRIES, INC.
THETA ENTERPRISES, INC.
PATHE LABORATORIES, INC.

for redetermination of a deficiency or
for refund of franchise tax under Article
9-A of the Tax Law for the privilege year
ended December 31, 1964.

Petitions
No. 7, 8 and 9

Taxes were computed on an individual basis against the above corporations as follows:

Pathe Industries, Inc.

Minimum Tax	\$ 25.00
Subsidiary Capital Tax	1,245.37
Total Tax	\$1,270.37

Theta Enterprises, Inc.

Business Capital	\$2,170,128.00
Tax at 1 Mill	2,170.13
Subsidiary Capital Tax	2,890.13
Total Tax	\$ 5,060.26

Pathe Laboratories, Inc.

Entire Net Income	\$1,066,114.00
Business allocation	59.421%
New York Base	633,496.00
Tax at 5 1/2%	\$ 34,842.28

On April 28, 1965 the taxpayer transmitted a letter to the bureau requesting permission to file on a combined basis. After extended correspondence and a conference held in the Albany office attended by William J. Schultz, secretary-treasurer of the taxpayer, and his assistant, John Deane, with Edward Scully and Bob Henk representing the bureau, the tax was fixed on an individual basis.

Petition for redetermination of deficiency or for refund of tax was timely filed on June 29, 1966.

A preliminary hearing was held in New York City on October 19, 1966 before John J. Genevich. The taxpayer was represented by the above indicated William J. Schultz and John Deane.

The top parent, Pathe Industries, Inc., holds 100% of the stock of Theta Enterprises, Inc. and the latter is 100% owner of Pathe Laboratories, Inc. The top parent furnishes substantial management, legal and accounting services to the other two companies. Theta is a mere paper company with no employees. It receives substantial interest from its subsidiary, Pathe Laboratories, Inc., because of large advances to it. The only operating company currently in the group is Pathe Laboratories, Inc., which is engaged in film processing.

Because of the inter-relationships indicated above (1. the first company being a holding company and rendering management, legal and accounting services, 2. Theta being a mere holding company, and 3. Pathe Laboratories, Inc. being the only operating company in the group) a strong case is presented for a combined return. However, we feel that some of the deductions claimed on the returns of Pathe Industries, Inc. and Theta apply to subsidiary capital activities relating to years prior to 1964, when the two held other active subsidiaries in addition to Pathe Laboratories, Inc. For example, Pathe Industries, Inc. and Theta have substantial deductions for interest expense paid to lending institutions. The indebtedness on which the interest expense was paid was incurred as far back as December, 1958

when a large loan was obtained from Prudential Insurance Company. The indebtedness was incurred to provide advances to other subsidiaries held prior to 1954 in addition to Pathe Laboratories, Inc. Also, the deduction for abandonment of leasehold more properly applies to subsidiary capital activities of years prior to 1964. Accordingly, a conference was held with the taxpayer on March 21, 1967, at which he was advised that a combined report would be recommended for 1964 and subsequent years, provided that the \$138,105 deduction for abandonment of leasehold was eliminated in 1964 and interest items were adjusted as indicated in schedule attached to this report showing computation of the revised entire net income for each company for 1964 and 1965. The taxpayer agreed to the proposed adjustments. Pathe Sound Service, Inc., a small operating subsidiary of Pathe Laboratories, Inc., qualifies for inclusion in 1965.

Based on the foregoing, the Board recommends that combined taxes be fixed as follows:

Calendar Year 1964

Revised Entire Net Income as per attached schedule:

Pathe Industries, Inc.		\$195,884.00
Theta Enterprises, Inc.		(427,042.00)
Pathe Laboratories, Inc.		<u>288,519.00</u>
Combined Entire Net Income		\$757,361.00
Combined business allocation % as per CF-3A filed		59.891%
New York Base		453,591.08
Combined tax at 5 1/2%		24,947.51
Plus minimum tax on two subsidiaries		50.00
Total combined tax		24,997.51
Less tax computed on individual basis as follows:		
Pathe Industries, Inc.	\$1,270.37	
Theta Enterprises, Inc.	5,060.26	
Pathe Laboratories, Inc.	<u>34,842.28</u>	
Reduction in tax		<u>41,172.91</u>
		\$16,175.40

Calendar Year 1965

Revised Entire Net Income as per attached schedule:

Pathe Industries, Inc.		\$(41,729.00)
Theta Enterprises, Inc.		(76,280.00)
Pathe Laboratories, Inc.		425,996.00
Pathe Sound Service, Inc.		<u>(3,954.00)</u>
Combined Entire Net Income		\$304,033.00
Combined business allocation % as per CF-3A filed		57.813%
New York Base		175,770.60
Combined tax at 5 1/2%		9,667.38
Plus minimum tax on three subsidiaries		75.00
Total combined tax		9,742.38
Less tax paid as follows:		
Pathe Industries, Inc.	\$2,094.71	
Theta Enterprises, Inc.	3,361.16	
Pathe Laboratories, Inc.	15,108.33	
Pathe Sound Service, Inc.	<u>25.00</u>	
Overpayment		<u>20,589.20</u>
		\$16,846.82

/s/

W. F. SULLIVAN

Chairman

Approved

E. A. DORAN

/s/

D. H. GILHOOLY

/s/

J. J. GENEVICH

JJG:MB
5/3/67

Approved JAMES R. MACDUFF 5/10/67

Approved: WALTER MACLYN CONLON 9 MAY '67

Calendar Year 1964

Computation of Revised Entire Net Income for Combined Return

Pathe Industries, Inc.

Entire Net Income reported	\$(88,289)
Plus addback of deduction for abandonment of leasehold	<u>138,105</u>
Balance	49,816
Less addition for interest attributable to subsidiary capital (CF-3, Sch. B, Item 31)	<u>11,895</u>
Balance	37,921
Plus addback of interest expense	<u>157,963</u>
Revised Entire Net Income for Combined Return	<u><u>\$195,884</u></u>

Theta Enterprises, Inc.

Income reported at item 33, page 1, CF-3	\$(519,856)
Plus addback of interest expense as follows:	
Total Interest Expense	\$179,031
Less Amount attributable to Pathe Laboratories, Inc.	<u>86,217</u>
Revised Entire Net Income for Combined Return	<u><u>\$ (427,042)</u></u>

Pathe Laboratories, Inc.

Entire Net Income reported	\$1,066,114
Less addback of interest paid to Theta Enterprises, Inc.	<u>77,595</u>
Revised Entire Net Income for Combined Return	\$ 988,519

Calendar Year 1965

Computation of Revised Entire Net Income for Combined Return

Pathe Industries, Inc.

Entire Net Income reported	\$ (200,362)
Plus addback of Interest Expense	<u>152,633</u>
Revised Entire Net Income for Combined Return	<u><u>\$ (41,729)</u></u>

Theta Enterprises, Inc.

Income reported at Schedule B, item 6, CT-3	\$ (178,180)
Plus addback of interest expense as follows:	
Total Interest Expense	\$179,868
Less Amount attributable to	
Pathe Laboratories, Inc.	<u>77,968</u>
Revised Entire Net Income for Combined Return	<u><u>\$ (76,280)</u></u>

Pathe Laboratories, Inc.

Entire Net Income reported	\$496,167
Less addback of interest paid to	
Theta Enterprises, Inc.	<u>70,171</u>
Revised Entire Net Income for Combined Return	<u><u>\$425,996</u></u>

Pathe Sound Service, Inc.

Entire Net Income as reported (No Change)	<u><u>\$ (3,954)</u></u>
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